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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/837,076	04/18/2001	David D. Hadden	1004-001	8830
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4678 7590 09/26/2006

MACCORD MASON PLLC  
300 N. GREENE STREET, SUITE 1600  
P. O. BOX 2974  
GREENSBORO, NC 27402

EXAMINER

TARAE, CATHERINE MICHELLE

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 09/26/2006

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/837,076  
Filing Date: April 18, 2001  
Appellant(s): HADDEN ET AL.

**MAILED**

SEP 26 2006

**GROUP 3600**

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Howard A. MacCord, Jr.  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed June 19, 2006 appealing from the Office action mailed September 23, 2005.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The After Final amendment filed December 20, 2005 was entered.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. Claim 9 is no longer rejected and is now objected to for having allowable subject matter.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

Appellant did not supply any evidence in the appeal brief.

Evidence relied on in the rejection and in this Examiner's Answer is as follows:

6,157,808	Hollingsworth	12-2000
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**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 4, 6, 7 and 31 are rejected under 35 U.S.C. 102(a,e) as being anticipated by Hollingsworth (U.S. 6,157,808).

As per claim 31, Hollingsworth discloses a method comprising steps performed by a computer including

defining a role having a measurable performance and a separately measurable skill, in which an improvement of the skill at least plausibly improves the performance (col. 3, line 65-col. 4, line 5; col. 5, lines 26-42 and 60-62; A job is a role with a measurable performance, where the job is associated with discrete units of work called tasks that can also be measured. A job requirement describes skills that are also measured and which may improve the performance of the job.);

associating an individual with the role (col. 5, lines 26-42; col. 6, lines 49-54; Employees may be associated with jobs.);

before the occurrence of an event that may increase a skill level of the individual, measuring the individual's skill to determine a skill level and measuring the individual's performance as a first actual performance metric (col. 7, lines 34-36; col. 9, lines 49-55; An employee's collective skill set and the status of each skill level are maintained in a database. A Job Performance Measure (JPM) table also maintains the job performance measure for each employee.);

after the occurrence of an event, assessing the individual's performance as a second actual performance metric (col. 11, lines 32-67; Figure 14; An employee's job performance is assessed after training/lessons. Additionally, the system provides a user with a GUI to view and manage employee evaluation schedules and training/lesson results.);

analyzing a relationship between the first and second actual performance metrics and the skill of the individual before and after the event occurrence on a computer (col.

8, lines 17-60; col. 10, lines 36-47 and 52-57; A tasks table for employees allows the analysis of employee job performance prior to and after training/lessons.); and

determining whether the event occurrence increased the performance of the individual based at least primarily on the relationship between the first and second actual performance metrics and the skill of the individual (col. 8, lines 17-60; col. 9, lines 12-18; The reference discloses analyzing training results to determine the existence of a potential relationship between certifications (representing the attainment of required skill levels to support a certain level of job performance) and lessons (training delivered to impart or improve skill levels).).

As per claim 4, Hollingsworth discloses the method of Claim 31 further comprising:

analyzing a difference between a required skill level for the role and the measured skill level of the individual and determining if training is necessary to raise the skill level to the required skill level (col. 7, lines 20-47; col. 12, lines 57-64; The system determines whether or not an employee requires a certification, which represents the attainment of required skill levels to support a certain level of job performance.).

As per claim 6, Hollingsworth discloses the method of Claim 31 further comprising:

comparing the measured skill levels of the individual before and after the event occurrence (col. 11, lines 32-42; Employees' skills are measured using training evaluation results.); and

correlating any difference between the measured skill levels of the individual before and after the event occurrence with the ability of the individual to carry out the defined performance (col. 7, lines 20-47; col. 12, lines 57-64; The system associates certain skill levels with successful job performance.).

As per claim 7, Hollingsworth discloses the method of Claim 31 further comprising;

comparing the measured skill level of the individual before and after the event occurrence with the first and second actual performance metrics (col. 11, lines 32-42; Employees' skills and job performance are measured using training evaluation results.); and

determining a result of changes in the measured skill level of the individual before and after the event occurrence on the ability of the individual to carry out the defined performance (col. 7, lines 20-47; col. 12, lines 57-64; The system associates certain skill levels with successful job performance.).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hollingsworth (U.S. 6,157,808).

As per claim 8, Hollingsworth discloses the method of Claim 31 wherein the event occurrence is a training event bearing on the actual skill level of the individual and further comprising:

measuring first and second actual performance metrics for the performance of individuals before and after training events to determine the effectiveness of the training on the actual skill level of the individuals (col. 7, lines 34-36; col. 9, lines 49-55; col. 11, lines 32-35 and 54-56; Employees' collective skill sets and the status of each skill level are maintained in a database. A Job Performance Measure (JPM) table also maintains the job performance measure for each employee. Exams are given to employees after training/lessons to assess the skill levels of employees.). However, Hollingsworth does not expressly disclose measuring first and second actual performance metrics of individuals where one individual is subject to training and *another is not* and comparing the first and second actual performance metrics of the second individual with the first and second actual performance metrics of the individual to determine effectiveness of the training event on the actual skill level. However, since Hollingsworth already teaches providing exams (usually at the end of training) to employees to assess employees' skill levels (col. 11, lines 54-56; col. 14, lines 21-25), at the time of the invention it would have been obvious to a person of ordinary skill in the art to simply give the exams to *all* employees (including those who have not taken the training) and then perform the comparison of skill levels between employees who have had training and those who have not, as doing so would not require any modification to the training and would only require the administering of an exam to a certain group of employees.



Furthermore, since the exams are designed to specifically assess employee skill levels (col. 12, lines 6-9), comparing exams results between trained and non-trained employees would provide very targeted information relating to the effectiveness of the training and thus, aid in the improvement/enhancement of the training provided to employees, which is a goal of the system of Hollingsworth (col. 3, lines 6-15).

**(10) Response to Argument**

In the Appeal Brief, Appellant argues the following:

1) Hollingsworth does not teach a measurable performance and a separately measurable skill as recited in claim 31;

2) Hollingsworth does not teach before the occurrence of an event that may increase a skill level of the individual, measuring the individual's skill to determine a skill level and measuring the individual's performance as a first actual performance metric as recited in claim 31;

3) Hollingsworth does not teach after the occurrence of an event, assessing the individual's performance as a second actual performance metric as recited in claim 31;

4) Hollingsworth does not teach analyzing a relationship between the first and second actual performance metrics and the skill of the individual before and after the event occurrence on a computer as recited in claim 31;

5) Hollingsworth does not teach determining whether the event occurrence increased the performance of the individual based at least primarily on the relationship

between the first and second actual performance metrics and the skill of the individual as recited in claim 31; and

6) Examiner uses improper hindsight reasoning to reject claim 8.

In response to argument 1), Examiner respectfully disagrees. In col. 3, line 67- col. 4, line 1, Hollingsworth discloses an individual's skills being measured by the certifications the individual holds. In col. 7, lines 20-36, Hollingsworth further discloses that certifications are used to represent skill sets possessed by an employee. An Employee Certification table is used to track the current skill sets possessed by an employee. Thus, the skills an employee has are measured by the certifications the employee has relating to those skills. In col. 9, lines 49-57, Hollingsworth discloses a Job Performance Measure table for tracking an employee's ability to function at higher cognitive, psychomotor and affective levels. The Job Performance Measure table is developed, in part, as result of the Tasks associated with the performance of a job. In col. 11, lines 6-12, Hollingsworth discloses Tasks having some standard of performance associated with them. Therefore, an employee's job performance is measured against the standard of performance associated with the tasks that are related to the job. Thus, Hollingsworth does teach a measurable performance and a separately measurable skill. Additionally, Examiner notes that in the arguments on pages 7 and 8 of the Brief, Appellant uses skills and tasks interchangeably in Hollingsworth and further alleges that the Job Performance table is a collection of *skills*. However, Examiner points out that Hollingsworth makes it clear that tasks and skills are *different and separately*

*measurable*. In addition to the citations provided above, also see col. 9, lines 12-13, where it discloses that certifications represent skills required to successfully perform tasks. That tasks and skills are different and separately measurable is further supported by the separate tables used to maintain them: the Employee Certification table for tracking the current skill sets possessed by an employee (col. 7, lines 20-36), and the Tasks table for identifying key attributes of a task such as activity type and "special requirements" associated with successful task performance (col. 8, lines 17-24). Accordingly, Examiner respectfully submits that Hollingsworth does teach a measurable performance and a separately measurable skill as recited in claim 31.

In response to argument 2), Examiner respectfully disagrees. As discussed above, in col. 7, lines 34-36 and col. 9, lines 49-55, an employee's collective skill set and the status of each skill level are maintained in an Employee Certification table and a Job Performance Measure (JPM) table also maintains the job performance measures for each employee. Col. 7, lines 41-47, further discloses tracking the certifications that an employee has in order to identify when an employee needs to be recertified, where the recertification occurs via a training event. Thus, the status of an employee's skill set is tracked and measured prior to the training in order to determine whether or not the employee has to attend the training. Likewise, the performance of tasks associated with an employee's job are monitored in the event the standards of performance (Procedures and References) change, thereby requiring the employee to attend training (col. 11, lines 6-30). Thus, the employee's job/task performance is tracked and

measured prior to the training in order to determine whether or not the employee has to attend the training. Accordingly, Examiner respectfully submits Hollingsworth does teach before the occurrence of an event that may increase a skill level of the individual, measuring the individual's skill to determine a skill level and measuring the individual's performance as a first actual performance metric as recited in claim 31.

In response to argument 3), Examiner respectfully disagrees. In col. 14, lines 21-25, Hollingsworth discloses evaluating the employee after the training event. In col. 5, lines 33-35, Hollingsworth discloses that an evaluation is a scheduled assessment of student behavior, psychomotor ability, skills mastery or cognitive ability. Thus, Examiner respectfully submits Hollingsworth does teach after the occurrence of an event, assessing the individual's performance as a second actual performance metric as recited in claim 31.

In response to argument 4), Examiner respectfully disagrees. First, Examiner notes that claim 31 recites that the event *may* increase the skill level of the individual. Thus, that Hollingsworth *presumes* a training event *does* increase the skill level of the individual (via certifications), is not precluded from the claims as Hollingsworth simply answers the question of *whether* the event "may increase the skill level of the individual" with, yes, the training event does increase the skill level of the individual (col. 7, lines 20-22, where certifications are presumed to represent skills important to successful job performance). Thus, from this perspective, the presumption that the training event in

which an employee acquires a certification or gets recertified, does increase skill and therefore, job performance, is the analysis of the relationship between the first and second actual performance metrics and the skill of the individual before and after the event occurrence. Having said that, Hollingsworth also analyzes the relationship between the first and second actual performance metrics and the skill of the individual before and after the event occurrence by identifying weaknesses in the training programs, where the weaknesses are identified by poor performance measures (col. 9, lines 15-23; col. 10, lines 13-17 and 53-57). Thus, Examiner respectfully submits Hollingsworth does teach analyzing a relationship between the first and second actual performance metrics and the skill of the individual before and after the event occurrence on a computer as recited in claim 31.

In response to argument 5), Examiner respectfully disagrees. As discussed above, Hollingsworth discloses identifying weaknesses in the training programs, where the weaknesses are identified by employee poor performance measures (col. 9, lines 15-23; col. 10, lines 13-17 and 53-57). Employee performance and attainment of skills are measured at the end of the training through evaluations (i.e., exams) (col. 5, lines 33-35; col. 11, lines 32-42 and 54-55; col. 14, lines 21-25). Thus, Examiner respectfully submits Hollingsworth does teach determining whether the event occurrence increased the performance of the individual based at least primarily on the relationship between the first and second actual performance metrics and the skill of the individual as recited in claim 31.

In response to argument 6), Examiner respectfully disagrees. In response to applicant's argument that Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Additionally, Hollingsworth does disclose measurable performance and a separately measurable skill as discussed above in the response to argument 1). Furthermore, Hollingsworth also discloses identifying weaknesses in the training event by assessing the evaluations given to employees after going through the training (col. 5, lines 33-35; col. 11, lines 32-42 and 54-55; col. 14, lines 21-25). Thus, there is suggestion in Hollingsworth of a desire to evaluate the effectiveness of the training programs in their ability to improve an employee's job performance. Comparing the first and second actual performance metrics of two individuals, where one has undergone training and the other has not (by giving the evaluation/exam at the end of the training to both employees, for example), provides an additional measure to the evaluations used in Hollingsworth for evaluating the effectiveness of the training programs. Thus, the comparison of exam results between trained and non-trained employees would provide additional information relating to the effectiveness of the training and thus, aid in the improvement/enhancement of the

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training provided to employees, which is a goal of the system of Hollingsworth (col. 3, lines 6-15).

In conclusion, Appellant's arguments have been fully considered, but are found unpersuasive.

Examiner notes that Appellant's arguments with regard to claim 9 are moot, as claim 9 is now objected to for having allowable subject matter.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Michelle Tarae". The signature is fluid and cursive, with the first letter of each word being capitalized and prominent.

C. Michelle Tarae  
Patent Examiner  
Art Unit 3623

Conferees:

A handwritten signature in black ink, appearing to read "Romain Jeanty". The signature is fluid and cursive, with the first name "Romain" written in a larger, more prominent script than the last name "Jeanty".

Romain Jeanty  
Acting Supervisory Patent Examiner  
Art Unit 3623

Handwritten initials "SMD" in black ink, positioned above the printed name.

Susanna Diaz  
Primary Patent Examiner  
Art Unit 3623

MacCord Mason PLLC  
300 N. Greene Street, Suite 1600  
P.O. Box 2974  
Greensboro, NC 27402